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MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	01-336
Name (under which you were convicted):		Docket or Case No.:	
Lawrence Johnson		<del>336-05</del>	
Place of Confinement:		Prisoner No.:	
U.S.P./CANAAN		11303-067	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
v.		Lawrence Johnson	

## MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court, Middle District of Pa.  
 (b) Criminal docket or case number (if you know): 336-05
2. (a) Date of the judgment of conviction (if you know): July 10, 2003  
 (b) Date of sentencing: February 5, 2004
3. Length of sentence: 115 months
4. Nature of crime (all counts): Distribution of cocaine and cocaine base in violation of 21 U.S.C. 846, 841(a) and 841(b)
5. (a) What was your plea? (Check one)  
 (1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐  
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? charged Indictment
6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐
7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the 3rd. Cir.

(b) Docket or case number (if you know): 04-1414

(c) Result: DENIED

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: Whether or not District court erred in denying Appeallants motion to "suppress evidence" for where arresting authority acted without reasonable suspicion in extending the scope of a routine traffic stop. 2# Did District Court err in denying Appeallants motion to suppress evidence where the vehicle in which Appeallant was a passenger was searched without a warrant.

#3. Did District Ct. err in denying Appeallant motion to suppress whereas defendant was a passenger and was searched?

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes ☐ No ☒

If "Yes," answer the following:

N/A

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know): N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

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(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒ N/A

(7) Result: N/A

(8) Date of result (if you know): N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

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12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

**GROUND ONE:** District Ct. erred in denying appellants motion to Suppress evidence where arresting authority acted without reasonable suspicion to arrest.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Appeallant respectfully contends that the officers didnt have a reasonable suspicion or probable-cause to detain or arrest him. Based upon their limited knowledge of alleged outstanding warrants for him as well as testimony that Appeallant back at the police cruiser while awaiting the officer, combined, these factors did not rise to the level of reasonable suspicion or probable-cause.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Direct Appeal pursuant to 28 U.S.C. 1291&18 USC 3742 (a)

Name and location of the court where the motion or petition was filed: United States Court of Appeals for the Third Circuit/ Phila. Pa.

Docket or case number (if you know): 04-1414

Date of the court's decision: ? N/A

Result (attach a copy of the court's opinion or order, if available): DENIED

\_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

United States Court of Appeals for the Third Circuit

Docket or case number (if you know): 04-1414

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A -DENIED

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

**GROUND TWO: District Court erred in denying the Appellants motion to suppress evidence where the vehicle in which the Appellant was a passenger was searched without a warrant.**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

Appellant respectfully contends that the warrantless search of the duffle bag within the vehicle was not justified as a search incident to a lawful and arrest and was also not justified as a lawful inventory search.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 28 U.S.C. 1291 & 18 U.S.C. 3742(a)

Name and location of the court where the motion or petition was filed:

United States Court of Appeals for the Third CircuitDocket or case number (if you know): 04-1414Date of the court's decision: N/A ?Result (attach a copy of the court's opinion or order, if available): N/A -DENIED

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

United States Court Of Appeals For the Third CircuitDocket or case number (if you know): 04-1414Date of the court's decision: N/A ?Result (attach a copy of the court's opinion or order, if available): N/A-DENIED

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND THREE:** District Court erred in denying appellants motion to suppress evidence where the vehicle in which the Appellant was a passenger was searched pursuant to an inventory search.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Appellant was not lawfully arrested, therefore, any search of the vehicle pursuant to arrest should be suppressed.

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: 28 U.S.C. 1291 & 18 U.S.C. 3742 (A)Name and location of the court where the motion or petition was filed: U.S. Distr. Ct. Midd. Dis. Pa./United States Court of Appeals for the 3rd Cir.

1:01CR

Docket or case number (if you know): 04-1414 App. No. U.S. Ct. App./Distr. Ct. 0336-05Date of the court's decision: N/A ?Result (attach a copy of the court's opinion or order, if available): N/A-DENIED

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☒ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

United States Court of Appeals for the Third Cir.Docket or case number (if you know): 04-1414Date of the court's decision: N/A/?

Result (attach a copy of the court's opinion or order, if available): N/A-denied

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

**GROUND FOUR:**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:



Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: NONE

(b) At arraignment and plea: Kirstin M. Sweigard, P.A.I.D. 83801  
3111 N. Front St., Harrisburg, Pa 17110

(c) At trial: Kirstin M. Sweigard, esq.  
3111 N. Front st., Harrisburg, Pa. 17110

(d) At sentencing: Kirstin M. Sweigarde, esq.  
3111 N. Front Street, Harrisburg, Pa. 17110

(e) On appeal: Kirstin M. Sweigard, esq.  
3111 N. Front St., Harrisburg, Pa. 17110

(f) In any post-conviction proceeding: Kirstin M. Sweigard, esq.  
3111 N. front St., Harrisburg, Pa. 17110

(g) On appeal from any ruling against you in a post-conviction proceeding: Charles Murry esq. Hbg. Pa. (Atty at Law)/N.L.P.A.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒ N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

N/A

N/A

N/A

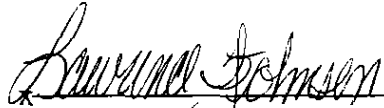
\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of ---

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: \_\_\_\_\_

Wherefore, Appeallant, Lawrence Johnson, based on the foregoing arguments,  
respectfully request that your Honorable Court vacate his judgment of convi-  
ction and sentence, that District Court reverse it's order denying Suppr-  
or any other relief to which movant may be entitled.  
ession motion, and order the suppression of all evidence unconstitutionally  
obtained and the fruits thereof.



Signature of ~~XROCKY0000X~~  
Lawrence Johnson

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this  
Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on 11-8-05

\_\_\_\_ (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).



Signature of Movant  
Lawrence Johnson

If the person signing is not movant, state relationship to movant and explain why movant is not signing this  
motion. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

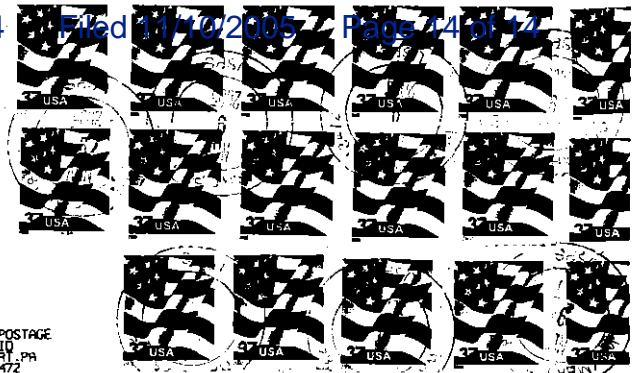
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**Motion to Vacate, Set Aside, or Correct a Sentence  
By a Person in Federal Custody**

**(Motion Under 28 U.S.C. § 2255)**

**Instructions**

1. To use this form, you must be a person who is serving a sentence under a judgment against you in a federal court. You are asking for relief from the conviction or the sentence. This form is your motion for relief.
2. You must file the form in the United States district court that entered the judgment that you are challenging. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file the motion in the federal court that entered that judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. If you cannot pay for the costs of this motion (such as costs for an attorney or transcripts), you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you.
7. In this motion, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different judge or division (either in the same district or in a different district), you must file a separate motion.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:  
  
Clerk, United States District Court for the Middle District of Pennsylvania  
P.O. Box 1148  
Scranton, PA 18501-1148
9. **CAUTION:** You must include in this motion all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.



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Lawrence Johnson  
11303-067  
U.S. Penitentiary  
P.O. Box 300  
Waymart, PA 18472

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NOV 10 2005

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MARY E. D'ANDREA, CLERK  
Per *[Signature]*  
DEPUTY CLERK

Clerk, United States District Court  
for the Middle District of Pennsylvania  
P.O. Box 1148  
Scranton, PA 18501-1148

